



6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R03-OAR-2016-0373; FRL- 9957-19-Region 3]**

**Air Plan Approval; WV; Infrastructure Requirements for the 2012 Fine Particulate Standard**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve a state implementation plan (SIP) revision submittal from the State of West Virginia pursuant to the Clean Air Act (CAA). Whenever new or revised national ambient air quality standards (NAAQS) are promulgated, the CAA requires states to submit a plan for the implementation, maintenance, and enforcement of such NAAQS. The plan is required to address basic program elements, including, but not limited to, regulatory structure, monitoring, modeling, legal authority, and adequate resources necessary to assure attainment and maintenance of the standards. These elements are referred to as infrastructure requirements. West Virginia has made a submittal addressing the infrastructure requirements for the 2012 fine particulate matter (PM<sub>2.5</sub>) NAAQS. This action proposes to approve portions of this submittal.

**DATES:** Written comments must be received on or before [insert date 30 days from date of publication].

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R03-OAR-2016-

0373 at <http://www.regulations.gov>, or via email to [pino.maria@epa.gov](mailto:pino.maria@epa.gov). For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the “For Further Information Contact” section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Ellen Schmitt, (215) 814-5787, or by e-mail at [schmitt.ellen@epa.gov](mailto:schmitt.ellen@epa.gov).

**SUPPLEMENTARY INFORMATION:** On November 17, 2015, the State of West Virginia through the West Virginia Department of Environmental Protection (WVDEP) submitted a revision to its SIP to satisfy the requirements of section 110(a)(2) of the CAA for the 2012 PM<sub>2.5</sub> NAAQS.

## **I. Background**

On July 18, 1997, EPA promulgated a new 24-hour and a new annual NAAQS for PM<sub>2.5</sub> (62 FR 38652). On October 17, 2006, EPA revised the standards for PM<sub>2.5</sub>, tightening the 24-hour PM<sub>2.5</sub> standard from 65 micrograms per cubic meter ( $\mu\text{g}/\text{m}^3$ ) to 35  $\mu\text{g}/\text{m}^3$ , and retaining the annual PM<sub>2.5</sub> standard at 15  $\mu\text{g}/\text{m}^3$  (71 FR 61144). Subsequently, on December 14, 2012, EPA revised the level of the health based (primary) annual PM<sub>2.5</sub> standard to 12  $\mu\text{g}/\text{m}^3$ . *See* 78 FR 3086 (January 15, 2013).<sup>1</sup>

Pursuant to section 110(a)(1) of the CAA, states are required to submit SIP submissions meeting the applicable requirements of section 110(a)(2) within three years after promulgation of a new or revised NAAQS or within such shorter period as EPA may prescribe. Section 110(a)(2) requires states to address basic SIP elements such as requirements for monitoring, basic program requirements, and legal authority that are designed to assure attainment and maintenance of the NAAQS. Section 110(a) imposes the obligation upon states to make a SIP submission to EPA for a new or revised NAAQS, but the contents of that submission may vary depending upon the facts and circumstances. In particular, the data and analytical tools available at the time the state develops and submits the SIP submission for a new or revised NAAQS affect the content of the submission. The content of such SIP submission may also vary depending upon what provisions the state's existing SIP already contains.

More specifically, section 110(a)(1) provides the procedural and timing requirements for SIP submissions. Section 110(a)(2) lists specific elements that states must meet for infrastructure

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<sup>1</sup> In EPA's 2012 PM<sub>2.5</sub> NAAQS revision, EPA left unchanged the existing welfare (secondary) standards for PM<sub>2.5</sub> to address PM related effects such as visibility impairment, ecological effects, damage to materials and climate impacts. This includes an annual secondary standard of 15  $\mu\text{g}/\text{m}^3$  and a 24-hour standard of 35  $\mu\text{g}/\text{m}^3$ .

SIP requirements related to a newly established or revised NAAQS. As mentioned earlier, these requirements include basic SIP elements such as requirements for monitoring, basic program requirements, and legal authority that are designed to assure attainment and maintenance of the NAAQS.

## **II. Summary of State Submittal**

On November 17, 2015, West Virginia provided a submittal to satisfy section 110(a)(2) requirements of the CAA for the 2012 PM<sub>2.5</sub> NAAQS, which is the subject of this proposed rulemaking. This submittal addressed the following infrastructure elements or portions thereof, which EPA is proposing to approve: Section 110(a)(2)(A), (B), (C), (D)(i)(II) (prevention of significant deterioration), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M) of the CAA. A detailed summary of EPA's review and rationale for approving West Virginia's submittal may be found in the Technical Support Document (TSD) for this rulemaking action which is available on line at [www.regulations.gov](http://www.regulations.gov), Docket ID Number EPA-R03-OAR-2016-0373. This rulemaking action does not include any proposed action on section 110(a)(2)(I) of the CAA which pertains to the nonattainment requirements of part D, title I of the CAA, because this element is not required to be submitted by the 3-year submission deadline of section 110(a)(1) of the CAA, and will be addressed in a separate process.

At this time, EPA is not proposing action on section 110(a)(2)(D)(i)(I) regarding the interstate transport of emissions, nor is the Agency proposing action on section 110(a)(2)(D)(i)(II) relating to visibility protection. EPA intends to take later separate action on these portions of West Virginia's submittal.

### **III. Proposed Action**

EPA is proposing to approve the following elements or portions thereof of West Virginia's November 17, 2015 SIP revision: Section 110(a)(2)(A), (B), (C), (D)(i)(II) (prevention of significant deterioration), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M) of the CAA. West Virginia's SIP revision provides the basic program elements specified in section 110(a)(2) of the CAA necessary to implement, maintain, and enforce the 2012 PM<sub>2.5</sub> NAAQS. This proposed rulemaking action does not include action on section 110(a)(2)(I) which pertains to the nonattainment planning requirements of part D, title I of the CAA, because this element is not required to be submitted by the 3-year submission deadline of section 110(a)(1) of the CAA, and will be addressed in a separate process.

EPA will take later separate action on section (D)(i)(I) (interstate transport of emissions) and on section (D)(i)(II) (visibility protection) for the 2012 PM<sub>2.5</sub> NAAQS. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

### **IV. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule, pertaining to West Virginia's section 110(a)(2) infrastructure requirements for the 2012 PM<sub>2.5</sub> NAAQS, does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Particulate matter, Reporting and recordkeeping requirements.

**Authority:** 42 U.S.C. 7401 et seq.

Dated: December 1, 2016.

Shawn M. Garvin,  
Regional Administrator,  
Region III.

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